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THE
ARMIES
INDEMNITY,
WITH ADDITION;
Together with
A DECLARATION

SHEWING,
How every Subject of ENGLAND
ought to be tried for Treasons,
Felonies, and all other Capitall
Crimes, as is set down in
the Lawes of the
LAND.

y DAVID JENKINS; now Pri-
soner in the Tower of *London*.



Printed in the Yeare, 1648.

THE
ARRMIS
INDUSTRY

WITH ADDITION

TO THE
RECOLARATION

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Printed in the Year, 1848.

The Armies Indemnity, &c.

Upon the publishing of the Ordinance of the 22 of May last, for the Indemnity of the Army, certaine Gentlemen well affected to the peace of the Kingdome, and safety of the Army, desired me to set down in writing, whether by the Law of the Land, the said Ordinance did secure them from danger, as to the matters therein mentioned: For whose satisfaction in a businesse wherein the lives and fortunes of so many men were concerned, and the peace of the Kingdom involved, I conceived I was bound in duty and conscience, faithfully and truly to set down what the Law of the Land therein is, which accordingly I have with all sincerity expressed in this following discourse.

The danger of the Army by the Law of the Land is apparent to all men: It is high Treason by the Law of the Land to leavie warre against the King, to compasse or imagine his death, or the death of his Queene, or

25 Ed. 3. c.

11.

2 R. 2. c. 3.

1 H. 4. c. 10.

1 & 2. Ph. &

Mary. 6. 10.

of his eldest Sonne, to counterfeite his money, or his great Seale; These are the very words of the Law: Other Treasons, then are specified in the Act, are declared to be no Treason untill the King and his Parliament shall declare otherwise, they are the very words of the Law. King and Commons, King and Lords, Commons and Lords, cannot declare any other thing to be Treason, then then is declared; as appears by the *Lord Cook*, in the places cited in the Margin. A Law-book published by order of the House of Commons this Parliament, as appears in the last leaf of the 1. part of the Institutes, published likewise by their Order.

Mr. John the Solicitor in his speech upon the Arraignment of the Earle of Strafford, Printed by order of the House of Commons. P. 7. 13.

The Resolutions of all the Judges of England upon the said Statute of the 25. *Edward 3.* (as appears in the said third part of the Institutes, Chap. High-Treason) have been, that to imprison the King, untill he agree to certaine demands, is High-Treason; to seize his Ports, Forts, Magazine for Warre, are High-Treason; to alter the Lawes is High-Treason.

The word King in the Statute of 25. *Edw. 3. c. p. 2.* must be understood of the Kings naturall person; for that person

erson can only die, have a Wife, have Son, or be imprisoned.

The Priviledge of Parliament protects no man for treason or felony, though he be a Member; much less can they protect others: Those who cannot protect themselves, have no power to make Ordinances to protect others who are no Members.

The Statute of 11. Hen. 3. c. 1. doth express words free all persons who adhere to the King.

The Army by an Act of Indemnity free themselves from all those dangers, which an Ordinance can no more do then repeal all the Lawes of the Land; the whole and sole power of Law to pardon all Treason, Felonies, &c. being solely and wholly in the King, as is cleared by the Statute of 7 H. c. 2. and the Law of the Land in all times.

Having shewed the danger of the Army by the Law of the Land; next consider the Ordinance of the Lords and Commons published the 2 of May last for their Indemnity; by the ensuing discourse it doth appear they have no Indemnity at all hereby.

The Indemnity proposed by the Ordinance, is for an Act done by the

4 Pars Instit.
c Parl. p. 25.

11 H. 7. c. 1.

Seamford 1.
2 fol. 99.
18 E. 1. 3 Statutes at M
1425 1426
20 Ed. 3. c.
1. Ric. 2 c.
10. Ric. 2 c.
4 Pars Instit.
pag. 93 94 95
29.

authority of the Parl. or the service
or benefit thereof; and that the Judges
and all other Ministers of Justice shall
allow thereof.

3 Pars inst.

p 23.

2 pars inst.

67.48.

1 pars inst.

193.

Princes case

8, reports.

This Ordinance cannot secure the
Army for these reasons.

1. Their Judges are sworn to do
justice according to the Law of the
Land, and therefore the Judges must
be forsworn men if they obey it; be-
cause an Ordinance of both Houses is
no Law of the Land, and no man can
believe they will perjure themselves
palpably and visibly in the eye of the
World.

2. All tryals for Treasons, Felonies,
Robberies, and such like capital offences,
are by the Law of the Land to be
by indictment of a Jury appointed
of the Neighbourhood where the offence
was done; there is no common
Jury-man but understands what the
Law is in these cases as well as the best
Lawyers, and the Law makes the Judges

of the fact, whereby the soldier is
left to their mercy whom he hath offe-
nded (as some of them have lately
had no full experience, and therefore
doe not rightly apprehend their danger)

Now no man can think that the Jurors
will perjure themselves to acquit the
soldiers for robbing and plundering

Declaration
of the Army
presented at
Walden,
and printed
by the ap-
pointment
of the Offi-
cers subscri-
bed.

Y^h 10th 1648

of the Countreys, and thereby utterly destroy their own Rights and Properties.

3. If the Judges conceive (as they say) that the taking of other mens horses or goods, is not by the Authority of Parliament, or for the service and benefit thereof, the souldier dies for it; they may say to steale or rob any man of his goods is not for the Parliaments service, but against it, which was alwayes the sence of the people, and doubtlesse the Iurors will not think otherwise.

4. This Ordinance is restrained to the authority, service or benefit of the Parliament. The Lords and Commons make no more a Parliament by the Law of the Land then a body without a head makes a man; for a Parliament is a body composed of a King their head, the Lords and Commons the Members. All three together make one body, and that is the Parl. and no other; and the Judges may, ought, and I believe will according to their oathes proceed as not bound at all by this Ordinance. For it is restrained to the authority of Parliam. service or benefit thereof, whereas the two Houses are not the Parl. but onely parts thereof, and by the abuse and misunderstan-

4 Pars inst.

P. 1.

3 Pars inst.

p. 22.

1 Pars inst.

p. 1. E

28 H. 8. f. 11.

Dier 38 H. 8.

fol. 60.

12 H. 7. 20.

1 pars inst.

159.

Princes case

8 Reports.

ding of this word *Parliament*, they have miserably deceived the people.

5. This Ordinance is against the Ordinance which expressly prohibits plundering, and so there is one Ordinance against another; whereby the Judges have an out-let to proceed on the one or the other, and thereby the Army hath no manner of security.

22 Aug.
1642.
Col. of Ord.
1st part,
565. 552.
605. severall
Ordinances.

1 Pars. inst.
109.
1 Pars inst.
120.
4 Pars p. 19.

6. The word *Parliament* is a French word (howbeit such Assemblies were before the Norman Conquest heere and signifies in that Language to consult and treat; that is the sence of the word *Parler* in the French Tongue. The Writ whereby the two Houses are assembled, which is called the Writ of Summons of Parliament, at all times, and at this Parliament used and which is the warrant, ground and foundation of their meeting, is for the Lords of the House of Peeres, the Judges and Kings Counsell to consult and treat with the King (that is the *Parler*) of great concernments touching, 1. the King, secondly, the defence of his Kingdome, thirdly, the defence of the Church of England. It cannot be a Parliament that will not parle with their King, but keepe him in prison, and not suffer him to come to them and parle, and therefore the

Law, and sense, and reason, informing every man that is no manner of Parliament (the King with whom they should parle being so restrained that they will not parle with him) the Army hath no manner of security by this Ordinance; for their indemnification refers to that which is not in being untill the King be at liberty.

7. It is is more then probable that their Iudges before the last Circuit had instructions to the effect of this Ordinance; but they the Iudges making conscience of their Oath, layd aside the said instructions, and ought, and may, and it is believed will no more regard this Ordinance, then the said instructions: What was done in the last circuit the Army well knows, touching many of their fellow Soldiers.

8. The Houses in their first proposition to his Majesty for a safe and well-grounded peace, sent to Newcastle to desire a pardon from his Majesty for themselves: they who desire a pardon, cannot grant a pardon (common reason dictates this to every man) and therefore that the Army should accept an indemnity from them, who seek it for themselves, or should conceive it of any manner of force, is a fancy; so that no

The Common Soldiers second Apology.

6 Grievances of the Army published 15 May last.

three grievances of Col. Riches Regiment.

man in the whole army, but may apprehend, that it is vain and a meere delusion.

9. His Majesty by his gracious message of the 12 of May last, hath offered an Act of Oblivion, and a generall pardon to all his people; this done the Law doth indemnifie the Army (without all manner of scruple) for any thing that hath been done; for it is an Act of Parli. when the King & two Houses concur, and bindes all men. There is no safety by the Ordinance; there is safety by an Act of Parliament: and will not reasonable men preferre that which is safe before that which is unsafe.

10. His Majesty by his said Letter agrees to pay the arrears of the army; I am sure that it is a publick debt, and the cheifest and the first that by the two Houses should be paid, and before any dividend or gratuities bestowed among themselves; for their blood, limbs, and lives have put and kept the both Houses at rest in the power they have: So by this concurrence of his Majesty for your indemnity, and for your arrears, the Army have not an Ordinance, or the Publick Faith, but the Law of the Land to make sure unto them their indemnity for all Acts, and for their arrears, and therewith also bring peace to the Land.

11. The

11 The Kingdom and people generally desire these things. To such an army just and reasonable things must not be denied; the things formerly proposed are most just and reasonable, you may have them if you will, if you will not, you render this Kingdom miserable, wherein you will have your share of miseries: the head and the body are such an incorporation as cannot be dissolved without the destruction of both.

The additionall Ordinance of both Houses passed the 5. of June instant for the fuller indemnity of the Army, makes nothing at all to the matter. I. For that it extends not to Felony, Homicide, Burglary, Robbery, or any other capitall crime, which is the main businesse insisted upon, and most concerneth the Souldiers security.

12 The both Houses in the said additionall Ordinance say, that it is expedient that all offences be pardoned and put in oblivion; pardon and oblivion cannot be understood to be for a time, but for ever; and they themselves confesse that an Ordinance is not binding but *pro tempore*, which with the most advantageous interpretation can be but a reprove or delay of the execution of the Law, and therefore that cannot pardon or put in oblivion by their own shewing.

Mr. Pym's
Speech against the
Barl of
Strafford. p.
16.
Six considerations printed by the
command of
the House
of Commons.

But

27 H. 8. c.
34.

But the Law of the Land is, (and it hath constantly been practised in times) that no persons of what estate soever, have any power to pardon treason, felony, or any other offences but the King only, who hath the sole and whole power to pardon all such crime whatsoever. And in the same manner an Ordinance is of no authority at all to take away the right of private men's actions, by any evidence it can give; in truth all the evidence that this Ordinance gives, is, that it records to posterity nothing but a lawlesse and distempred time.

For remedy thereof I say again, it is a certaine truth, this Kingdom without an act of Oblivion, and a generall pardon, and the payment of Souldiers arreares, and meet regard had to tender consciences, will unavoidably be ruined.

June 10. 1647.

DAVID IENKING'S
Prisoner in the Tower
of London.

Sundry



Sundry Acts of Parliament
mentioned and cited in the
Armies Indemnities, set forth
in words at large for the
better satisfaction of such
as desire rightly to be
informed.

26. Ed. Chap. 5.

*A Declaration what offences
shall be adjudged Treason.*

Whereas divers opi-
nions have been be-
fore this time, in
what case Treason
shall be said, and in what not:
The King at the request of the
Lords and of the Commons
hath made a Declaration in the
manner as hereafter followeth:

That

That is to say, When a man doth compass, or imagine the death of our Lord the King, or of our Lady the Queen, or of the eldest Son and Heire: or doe violate the Kings companion, or the Kings eldest Daughter unmarried, or the Wife of the Kings eldest Son and Heire; or if a man do leavy War against the Lord our King in his Realm, or be adherent to the Kings enemies in his Realm, giving to them ayd and comfort in the Realm, or else-where, and therefore be probably attainted of open deed by people of their condition: And if a man counterfeit the Kings great or privy Seal, or his Mony: and any man bring false Mony into this Realm, counterfeit to the mony of England, and the mony called Flusburgh, or other like to the said mony of England, &c.

one that shall attend upon the
King, and do him true service,
shall be attainted or forfeit any
thing.

THE King our Sovereign
Lord calling to remembrance
the duty of Allegiance of his
subjects of this his Realm, and
that they by reason of the same
are bound to serve their Prince
and Sovereigne Lord for the
time being in his wars, for the
defence of him and the land, a-
gainst every rebellion, power, &
might raised, reared against him:
and with him to enter and abide
in service in battell, if case so re-
quire, and that for the same ser-
vice what fortune ever fall by
chance in the same battell against
the mind and will of the Prince
(as in this land sometime passed
hath been seen) that it is not rea-
sonable, but against all law, rea-
son & good conscience, that y^e said
subjects going with their Sobe-
raigne Lord in wars, attending
upon him in his person, or being
in

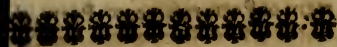
in other places by his commandment within this Land or without, any thing should lose or forfeit, for doing their duty or service of Allegiance. It be therefore ordained, enacted, and established by the King our Sovereign, by the advice and assent of his Lords Spirituall and Temporall and the Commons in this present Parliament assembled, and by authority of the same, that from henceforth no manner of person or persons whatsoever he or they be that attend upon the King and Sovereign Lord of this land for the time being, in his person, and do him true and faithfull service of Allegiance in the same, or be in other places by his commandments in his wars within this land, or without, that for the said deed and true duty of Allegiance, he or they bee in no wise convicted or attainted of high treason nor of other offences for that cause, by Act of Parliament, or otherwise by any procelle of Law, whereby he or any of them shall lose or forfeit

at life, lands, tenements,
 nts, possessions, heredita-
 ents, goods, chattels, or any o-
 ther things, but to be for that
 ed and service utterly dischar-
 ed of any vexation, trouble, or
 ss. And if any Act or Acts, or
 her procelle of the Law here-
 ter thereupon for the same,
 appen to be made contrary to
 ts Ordinance, that then that
 t or Acts, or other procelle of
 law, whatsoever they shall
 ee, shall bee utterly void.
 2obided alwayes, that no per-
 n or persons shall take any
 enefit or advantage by this
 t, which shall hereafter decline
 om his or their said Allegi-
 nce.

Cap. 24. In the Statute of 27.
 8. It is enacted that no per-
 n or persons of what estate or
 egree soever they be of, shall
 ave any power or authority
 o pardon or remit any Treas-
 on, Murders, Ban-slaugh-
 ers, or any other Felonies, &c.
 ut that the King shall have
 the

the sole and whole power and
 authoritie thereof united and knit
 to the Imperiall Crowne, as
 right it appertaineth, &c. And in
 the same Statute it is enacted fur
 ther, That none shal have power
 of what estate, degree, or con
 dition soever they be, to make Ju
 stices of Eyre, Justices of As
 sise, Justices of Peace, &c. but
 such Officers and Ministers shal
 be made by Letters Patent
 under the Kings great Seale
 in the name and by the authoritie
 of the King and his Heirs & Su
 ccessors Kings of this Realm.

In the first year of Queen Ma
 ry, and the first Chapter, It
 is enacted by the Queen, with the
 consent of the Lords and Com
 mons, That no deed or offence
 nor act of Parliament made treason
 shall be taken, deemed, nor
 judged to be high Treason, but
 only such as be declared, and ex
 pressed to be Treason by the Act
 of Parliament made 25. Ed. c.
 before mentioned.



Declaration of Mr. *David
Hinks*, now Prisoner in the
Tower of *London*, one of His
Majesties Judges in *Wales*, for
crimes of Treasons, Murthers,
Felonies, and all other ca-
pitall crimes, that they ought
only to be by Iuries, and
not otherwise, unlesse
it be by Act of
Parliament.

THe Common Law of this
Land is, that every Freeman
is subject to a tryall by Bill
of Attainder in Parliament
wherein His Majesty and
both Houses must necessarily concur,
or that tryall and attainder is an Act
of Parliament to which all men are sub-
ject to.

No man shall otherwise be de-
stroyed, &c. but by the lawfull judge-
ment of his Peers, or by the common
Law of the Land. Peeres to Noble-
men are Noblemen, Peeres to the
Commons are Knights, Gen. &c. Judge-
ment

^a Mag.
Charta, 19.
2 part. inst.
fol. 28, 29.
46, 48, 49,
50. compo-
sed by Sir
Ed. Cook and
published
by the Or-
der of the
House of
Commons
in May 1641.
4 parts instit.
fol. 41, 356.

ment of Peers, referres to Peers, tho words, *The Law of the Land*, refers to Commons; the Law of the Land is for the tryall of the life of free Commoner, by indictment, presentment of good and lawfull men where the deed is done, or by Writ original of the common Law, all this is declared in *Magna Charta*, c. 29, and by 25. Ed. 3. c. 4. 28. Ed. 3. c. 3. 37. Ed. 3. c. 8. 42. Ed. 3. c. 3. If the Lords will try any man by an Ordinance, they destroy that excellent Act of *Magna Charta*, and all those other good Laws.

Sir *Simon de Beresford* a free Commoner of England was condemned by the Lords to death by an Ordinance, which after the Lords better considering the matter, that they might be acquitted of that sentence, became suiters to the King, that what they had done, in future time might not be drawn into president, because that which they had done was against the Law; b with this agrees the practise, and usage of all times in this Land; all the free Commoners of this Kingdome have alwayes been tryed and acquitted or condemned in capitall causes by Iurers of their equals.

An Ordinance bindeth not in Law

at

b Rot. Par. 1
roul. 4. E. 2.
Num. 2. part
inst. p. 50.
with this
agrees Sir
John Lees
case, Rot.
Par. 42. E. 3.
Num. 22. 23.
3. Inst. f. 50.

all, & and but *pro tempore*, as the
 two Houses now affirm, a man's life
 cannot be tryed by that which is not
 ending, and to continue for all
 times; for life lost cannot be re-
 med.

By an Act of Parliament of the
 2. Philip and Mary, c. 10. It is en-
 acted that all trials for Treason here-
 to be had, shall be according to
 the course of the Common Law, and
 otherwise.

If the crime charged upon any be
 treason against the two Houses (a-
 gainst the Parliament it cannot be,
 there is no Parliament without
 the King) *That is no Treason in Law*,
 appears by 25. Ed. 3. c. 2. 11. R. 2.
 1. H. 4. c. 10. 1. & 2. Philip and
 Mary, c. 10. 13. part of the *Instructions*,
 page 23.

An Act of Parliament to make any
 Judge where he is party, is a void
 Act; & for none can be a Judge and
 party in the same cause; and therefore
 the House of Peers being a party tou-
 ching the crime charged upon any
 man, whom they would try by an Or-
 nance for Treason against both
 Houses, cannot be a Judge.

By the Petition of Right, & if any
 man deserve death he ought to suffer
 the

See 4. p.
 inst. f. 23, 48
 232, 298,
 292. 2. p.
 inst. f. 47,
 48, 157, 643.
 4 H. 7. f. 18.
 1 H. 7. f. 14.
 3 p. inst. f. 41.

d Dr Bo-
 nams case,
 8. part of
 Cooks Re-
 ports.

Petition
 of Right,
 the 3. C. R.

the same according to the Laws of the Land established, and not otherwise but an Ordinance of the Lords is established Law.

The protestation, the Vow and Covenant, the solemn League and Covenant, the Declarations of both Houses had, made and published since the unnaturall Warre, are amongst other things sworn and set down to be maintenance of the Lawes; the people of this Land ought to enjoy benefit of their Birth-right, the Law of the Land, and the making good the said Protestation, Vow and Covenant, League and Covenant, and Declarations; otherwise truth must be and will be said, that there is brought in a new arbitrary and tyrannical government.

3 pars inst.
fol. 89.

If the Lords have taken one mans life by an Ordinance, they are bound to take any more, and the case differs in case any appeal be made from a tryall by Ordinance to a tryall at common Law, which was not done by that man whose life was taken away by an Ordinance.

The Lords ought to remember that His Majesty and His progenitors have made them a house of Peers; they are trusted to counsell him in peace

and defend him in warre, his Majesty *f* Nevels
 Parliament is to consult and treat *case, 8 part*
 with the Peers, and with his Councell *Cooks 100*
 Law, Judges, his Sergeants, Attur- *ports.*
 y, and Solicitor, and Masters of the
 Chancery, the Lords and that Councell
 the respective Writ of Summons to
 Parliament are to give Counsell, & the *g 4 parts inf.*
 use of Commons by their Writ to *fol. 4. 9.*
 forme and consent. *27 Edw. 3*

in the House of Lords, the Court *c. 1. 15.*
 Parliament onely is, for they onely *3 parts inf.*
 mine upon Oath ^a with them, the *fol. 125*
 g in Person sits, and by them *61 Hen. 7*
 erroneous judgements * (upon *fol. 20*
 petition to his Majesty for obtaine- ** 14 E. 3. c. 5*
 of a Writ of Error) by the advice
 the Judges are reversed, or affirmed
 &c. The Lords are to remember
 their eminency and grandeur is
 served by the Lawes, if they leave
 to will, and dishonour their King,
 make nothing of the Lawes, they
 make nothing of themselves in
 end.

And therefore, it is well worth
 observation what was said by Mr.
 Pym a Member of the House of
 Commons in his Speech against the
 death of *Strafford*, in the beginning
 of the Parliament, which speech is
 listed by the expresse order of the

F House

See 1 par.
book decl.
pag. 140.
163.

House of Commons, the words are these: *The Law is that which puts a difference betwixt good and evil, betwixt just and unjust; if you take away the Law, all things will fall into a confusion, every man will become a Law unto himselfe, which in the depraved condition of humane nature must needs produce many great enormities: Lust will become a Law, and Envy will become a Law, Covetousnesse and Ambition will become Lawes, and what of States, what decisions such Lawes will produce, may easily be discerned, i. 8.* They that love this Common-wealth as things now stand, will use all means to procure an Act of Oblivion, a generall pardon from His Majesty, to Souldiers their Arreares, and to the consciences a just and reasonable satisfaction, else we must all perish, for or last.

May 17. 1647.

God preserve His Majesty, and
Lawes, wherein their Lordships
the whole Kingdom are concerned

David Jenkins prisoner
in the Tower of London.





